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H.B. No. 12

A BILL TO BE ENTITLED

AN ACT

relating to the border prosecution unit.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 41, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. BORDER PROSECUTION UNIT

Sec. 41.351. DEFINITIONS. In this subchapter:

(1) "Board of directors" means the board of directors of the unit.

(2) "Border crime" and "border region" have the meanings assigned by Section 772.0071.

(3) "Border prosecuting attorney" means a prosecuting attorney in a border region who represents the state in the prosecution of felony border crimes.

(4) "Executive board" means the executive board governing the board of directors of the unit.

(5) "Prosecuting attorney" means a district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction.

(6) "Unit" means the border prosecution unit.

Sec. 41.352. GENERAL FUNCTION OF BORDER PROSECUTION UNIT.

The border prosecution unit is an independent unit that cooperates with and supports border prosecuting attorneys in prosecuting border crime.

1 Sec. 41.353. BOARD OF DIRECTORS. (a) The unit is governed
2 by a board of directors composed of the following prosecuting
3 attorneys:

4 (1) the district attorney for the 34th Judicial
5 District;

6 (2) the district attorney for the 38th Judicial
7 District;

8 (3) the district attorney for the 49th Judicial
9 District;

10 (4) the district attorney for the 63rd Judicial
11 District;

12 (5) the district attorney for the 79th Judicial
13 District;

14 (6) the district attorney for the 81st Judicial
15 District;

16 (7) the district attorney for the 83rd Judicial
17 District;

18 (8) the district attorney for the 112th Judicial
19 District;

20 (9) the district attorney for the 143rd Judicial
21 District;

22 (10) the district attorney for the 156th Judicial
23 District;

24 (11) the district attorney for the 229th Judicial
25 District;

26 (12) the district attorney for the 293rd Judicial
27 District;

1 (13) the district attorney for the 452nd Judicial
2 District;

3 (14) the criminal district attorney for Hidalgo
4 County;

5 (15) the county attorney with felony criminal
6 jurisdiction for Cameron County;

7 (16) the district attorney for Kleberg and Kenedy
8 Counties;

9 (17) the county attorney with felony criminal
10 jurisdiction for Willacy County; and

11 (18) any other prosecuting attorney who represents the
12 state in the prosecution of felonies for a judicial district that is
13 created by the legislature in the border region.

14 (b) A prosecuting attorney described by Subsection (a)
15 shall serve on the board of directors in addition to the other
16 duties of the prosecuting attorney assigned by law.

17 (c) The board of directors shall meet annually for the
18 purpose of electing the executive board and approving or amending
19 bylaws governing the unit.

20 (d) A majority of the members of the board of directors
21 constitutes a quorum for the transaction of business. The board of
22 directors must approve any action by a majority vote of the members
23 present.

24 (e) The board of directors shall divide the border region
25 into three subregions and shall set the boundaries of the
26 subregions as necessary.

27 (f) Each member of the board of directors shall enter into a

1 memorandum of understanding with the unit to collaborate and
2 cooperate in the prosecution of border crime.

3 Sec. 41.354. EXECUTIVE BOARD; DUTIES, AUTHORITY, AND
4 GOVERNANCE. (a) The board of directors is governed by an executive
5 board composed of seven members elected by the membership of the
6 board of directors, as follows:

7 (1) six members of the executive board shall be
8 elected to represent the subregions established under Section
9 41.353(e), with two members from each subregion elected by a
10 majority vote of the members of the board of directors whose
11 jurisdiction is located in that subregion; and

12 (2) one member of the executive board shall be elected
13 by a majority vote of all members of the board of directors.

14 (b) The board of directors shall establish procedures for
15 the election of the members of the executive board.

16 (c) Members of the executive board shall serve terms of two
17 years expiring January 1 of each odd-numbered year.

18 (d) If a vacancy on the executive board occurs before the
19 end of the vacating member's term, the executive board shall elect a
20 person to serve the remainder of the term. To be eligible for
21 election under this subsection, a person must meet any
22 qualifications required of the vacating member for service on the
23 executive board.

24 (e) The executive board shall conduct the business of the
25 unit.

26 (f) A majority of the members of the executive board
27 constitutes a quorum for the purpose of transacting business. The

1 executive board must approve any action by a majority vote of the
2 members present.

3 Sec. 41.355. OFFICERS. (a) The members of the board of
4 directors, on a majority vote, shall elect from among the
5 membership of the executive board a presiding officer and an
6 assistant presiding officer. The presiding officer serves as the
7 presiding officer of the board of directors and the executive
8 board, and the assistant presiding officer serves as the assistant
9 presiding officer of the board of directors and the executive
10 board.

11 (b) The presiding officer and the assistant presiding
12 officer serve terms of one year.

13 (c) The assistant presiding officer serves as presiding
14 officer of the board of directors and the executive board in the
15 presiding officer's absence or if a vacancy occurs in that office
16 until a new presiding officer is elected as provided by Subsection
17 (d).

18 (d) If a vacancy occurs in the office of presiding officer
19 or assistant presiding officer before the end of the vacating
20 officer's term, the executive board shall elect a person to serve
21 the remainder of the term.

22 Sec. 41.356. MEMBERSHIP ON BOARD OF DIRECTORS OR EXECUTIVE
23 BOARD NOT A CIVIL OFFICE OF EMOLUMENT. A position on the board of
24 directors or the executive board may not be construed to be a civil
25 office of emolument for any purpose, including those purposes
26 described in Section 40, Article XVI, Texas Constitution.

27 Sec. 41.357. REIMBURSEMENT FOR EXPENSES. A member of the

1 board of directors or executive board is not entitled to
2 compensation for service on the board of directors or executive
3 board, if applicable, but is entitled to be reimbursed for
4 necessary expenses incurred in carrying out the duties and
5 responsibilities of a member of the board of directors or the
6 executive board, if applicable, as provided by the General
7 Appropriations Act.

8 Sec. 41.358. UNIT ADMINISTRATOR; REGIONAL COUNSEL;
9 ADDITIONAL EMPLOYEES. (a) The executive board may employ a person
10 to serve as administrator of the unit and shall set the salary and
11 benefits of the administrator.

12 (b) The executive board shall employ one or more attorneys
13 as regional counsel for each subregion and shall set the salary and
14 benefits of each regional counsel.

15 (c) The executive board may employ additional employees
16 necessary for the discharge of the duties of the unit and shall
17 determine the compensation of those employees.

18 Sec. 41.359. DUTIES OF UNIT. (a) The unit, in
19 collaboration with the Department of Public Safety, shall assist
20 and support the members of the board of directors in the prosecution
21 of border crime, including by providing border prosecuting
22 attorneys, investigative and support staff, and other resources.

23 (b) The unit shall solicit requests for proposals from each
24 member of the board of directors to provide funding for the member
25 to employ one or more border prosecuting attorneys, to employ
26 investigative and support staff, and to provide other resources.

27 The unit shall review each request and make recommendations to the

1 criminal justice division of the governor's office regarding the
2 distribution of grant money under the prosecution of border crime
3 grant program established under Section 772.0071. A member of the
4 board who employs a border prosecuting attorney or investigative or
5 support staff shall set the salary and benefits of the attorney or
6 staff member.

7 (c) The unit may solicit requests for proposals from, and
8 make recommendations under Subsection (b) regarding the
9 distribution of grant money to, a prosecuting attorney who serves a
10 county or counties that are not located in the border region if the
11 Department of Public Safety determines that the county or counties
12 served by the attorney are significantly affected by border crime.

13 (d) The unit shall facilitate the coordination and
14 collaboration of the members of the board of directors with the
15 regional counsel employed by the unit and with other law
16 enforcement agencies, including the Department of Public Safety, in
17 the investigation and prosecution of border crime.

18 (e) The unit shall develop a nonexclusive list of offenses
19 not otherwise described by Section 772.0071(a)(1) that constitute
20 border crime to provide guidance and enhance uniformity in the
21 investigation and prosecution of border crime.

22 (f) The unit shall serve as a clearinghouse for information
23 related to the investigation and prosecution of border crime and
24 shall develop best practices and guidelines, including best
25 practices for the collection and protection of confidential law
26 enforcement information regarding each subregion.

27 (g) The unit shall assist in developing a training program

1 and providing training to prosecuting attorneys and law enforcement
2 agencies in the border region on specific issues and techniques
3 relating to the investigation and prosecution of border crime.

4 Sec. 41.360. DUTIES OF REGIONAL COUNSEL. (a) An attorney
5 employed as regional counsel for the unit shall assist the members
6 of the board of directors, border prosecuting attorneys, and other
7 regional counsel, as needed, in:

8 (1) the prosecution of border crime;

9 (2) the screening of cases involving border crime;

10 (3) the presenting of cases involving border crime to
11 a grand jury; and

12 (4) the preparation and trial of cases involving
13 border crime.

14 (b) The regional counsel shall serve as a liaison between
15 the members of the board of directors and other criminal justice
16 entities, including the Department of Public Safety and federal,
17 state, and local prosecutors and law enforcement agencies located
18 in the border region, by:

19 (1) working closely with those entities, as needed, to
20 coordinate and assist in the investigation and prosecution of
21 border crime; and

22 (2) attending multiagency task force hearings and
23 meetings held by federal, state, and local prosecutors and law
24 enforcement agencies on the investigation and prosecution of border
25 crime.

26 (c) The regional counsel shall provide legal and technical
27 assistance to law enforcement agencies investigating border crime,

1 including by:

2 (1) providing legal advice and recommendations
3 regarding Fourth Amendment search and seizure issues, relevant
4 statutes, and case law;

5 (2) drafting and reviewing affidavits requesting the
6 issuance of search warrants, wiretap orders, pen register and trap
7 and trace orders, mobile tracking device orders, and similar court
8 orders; and

9 (3) drafting requests for court orders authorizing:

10 (A) the interception of oral, wire, and
11 electronic communications;

12 (B) the installation and use of a pen register or
13 trap and trace device;

14 (C) the disclosure of subscriber or customer
15 records and information; and

16 (D) other similar court orders that are required
17 to be filed by a prosecutor.

18 (d) The regional counsel shall coordinate training with the
19 unit for members of the board of directors and law enforcement
20 agencies, including by:

21 (1) assisting in identifying training needs in the
22 subregion in which the member's office or the agency is located;

23 (2) assisting in the development of training curricula
24 and guidelines for the investigation and prosecution of border
25 crime; and

26 (3) participating in and hosting training
27 presentations and sessions in each subregion.

1 (e) The regional counsel shall provide legal and technical
2 assistance to border prosecuting attorneys, including by:

3 (1) performing legal research relating to
4 investigating and prosecuting border crime, if requested; and

5 (2) coordinating with border prosecuting attorneys
6 and law enforcement agencies to identify experts in the
7 investigation and prosecution of complex, long-term cases against
8 organized criminal enterprises.

9 Sec. 41.361. GIFTS AND GRANTS. The unit may apply for and
10 accept gifts, grants, and donations from any organization described
11 in Section 501(c)(3) or (4) of the Internal Revenue Code of 1986 for
12 the purposes of funding any activity of the unit under this
13 subchapter. The unit may apply for and accept grants under federal
14 and state programs.

15 SECTION 2. Sections [772.0071](#)(a)(1) and (2), Government
16 Code, are amended to read as follows:

17 (1) "Border crime" means any crime that occurs in the
18 border region and that undermines public safety or security,
19 including an offense:

20 (A) during the prosecution of which an
21 affirmative finding may be requested under Section 3g(a)(2),
22 Article [42.12](#), Code of Criminal Procedure;

23 (B) under Chapter 19, 20, 20A, 21, 22, 46, or 71,
24 Penal Code;

25 (C) under Title 7 or 8, Penal Code;

26 (D) under Chapter 481, Health and Safety Code;

27 (E) committed by a person who is not a citizen or

1 national of the United States and is not lawfully present in the
2 United States; or

3 (F) that is coordinated with or related to
4 activities or crimes that occur or are committed in the United
5 Mexican States.

6 (2) "Border region" means the portion of this state
7 that is located in a county that:

8 (A) is adjacent to~~+~~

9 [~~(A)~~] an international border; [~~or~~]

10 (B) is adjacent to a county described by
11 Paragraph (A); or

12 (C) is served by a prosecuting attorney whose
13 jurisdiction includes a county described by Paragraph (A) or (B).

14 SECTION 3. Section 772.0071(d), Government Code, is
15 repealed.

16 SECTION 4. This Act takes effect September 1, 2015.